

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS**

**Case No. 1:22-cv-00242**

**SCOTT PRESTA,**

**Plaintiff,**

**v.**

**JOHN DOE,**

**Defendant.**

**COMPLAINT**

**Preliminary Statement**

1. Plaintiff Scott Presta (“Plaintiff”) brings this action to enforce the consumer privacy provisions of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.
2. Defendant John Doe (“Defendant”) initiated a telephone call to Plaintiff’s cellular telephone using an automatic telephone dialing system (“ATDS”) and/or an artificial or prerecorded voice in violation of the TCPA.
3. Plaintiff never consented to receive the subject call from Defendant.

**Parties**

4. Plaintiff Scott Presta, is a resident of the state of Texas and this District.
5. Defendant transmitted the telephone number 512-XXX-XX00 as the caller ID signal of the originating call. Defendant also transmitted the IP address 45.33.58.161 of its server that initiated the originating call.

### **Jurisdiction & Venue**

6. This Court has federal question subject matter jurisdiction over this TCPA claim pursuant to 28 U.S.C. § 1331.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District as the TCPA violating call that gives rise to Plaintiff's claim was made into this District.

8. This Court has personal jurisdiction over Defendant because Defendant conducts business within the state of Texas by initiating the subject call to Plaintiff's Texas phone number while Plaintiff was within the state of Texas.

### **Factual Allegations**

9. Plaintiff is, and was at all times mentioned herein, a "person" as defined by 47 U.S.C. § 153(39).

10. Plaintiff's cellular telephone number, 512-XXX-XXXX, is assigned to a cellular telephone service. 512 is a Texas area code.

11. On February 24, 2022, Defendant initiated the subject call to Plaintiff's cell phone. Plaintiff was within the state of Texas and this District when he received the call.

12. When Plaintiff answered the call, there was a lengthy pause before an artificial or prerecorded message began. The message informed Plaintiff that unless he took immediate action, the electricity service to his house would be in danger of termination.

13. The artificial or prerecorded voice did not provide any identifying information as to the person or entity that was making the call or on whose behalf the call was being made.

14. The call was not made with the prior express consent of Plaintiff.

15. According to Plaintiff's Caller ID, the call was initiated from a device with the number 512-XXX-XX00.

16. Plaintiff is informed that the subscriber of the telephone number 512-XXX-XX00 did not make the subject call to Plaintiff, leading Plaintiff to believe that Defendant spoofed the caller ID signal of the telephone number from which the call was actually initiated.

**Count One:  
Violation of the TCPA, 47 U.S.C. § 227**

17. Plaintiff incorporates the allegations contained in paragraphs 1-16 as if fully set forth herein.

18. The foregoing acts and omissions of Defendant constitute a violation of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii) and 47 U.S.C. § 227(b)(1)(B), by making the subject call, not for emergency purposes and without Plaintiff's express consent, to the cellular telephone number of Plaintiff using an ATDS and/or artificial or prerecorded voice.

19. By engaging in these acts, Defendant knowingly violated the TCPA.

20. As a result of Defendant's violation of the TCPA, 47 U.S.C. § 227, Plaintiff is entitled to an award of \$500 in damages for the call Defendant made to Plaintiff's cellular telephone number using an ATDS and/or artificial or prerecorded voice, pursuant to 47 U.S.C. § 227(b)(3)(B). The court may award up to \$1,500 if the violation is found to be "knowing or willful," pursuant to 47 U.S.C. § 227(b)(3)(C).

**Relief Sought**

Plaintiff requests the following relief:

- A. A declaration that Defendant's actions complained of herein violated the TCPA;
- B. An award to Plaintiff as allowed by law;
- C. Leave to amend this Complaint to provide the identity of Defendant upon its discovery;
- D. Leave to amend this Complaint to conform to the evidence presented at trial; and
- E. Orders granting such other and further relief as the Court deems, necessary, just and proper.

Date: March 14, 2022

Respectfully submitted,

/s/*Mitchell N. Roth*

Mitchell N. Roth  
Virginia State Bar Number: 35863  
mroth@rothjackson.com  
ROTH JACKSON GIBBONS CONDLIN, PLC  
8200 Greensboro Drive, Suite 820  
McLean, VA 22102  
Telephone: 703-485-3536  
Facsimile: 804-485-3525